

FILED

JAN 05 2010

PATRICK E. DUFFY, CLERK

By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

JASPER PHILLIPS,)	CV 09-28-H-DWM-RKS
)	
Petitioner,)	
)	
vs.)	ORDER
)	
WARDEN MIKE MAHONEY,)	
)	
Respondent.)	
_____)	

Petitioner Phillips has filed a Petition for Writ of Habeas Corpus alleging several claims relating to his 2004 conviction for escape.

United States Magistrate Judge Keith Strong conducted preliminary screening of the Petition as required by Rule 4 of the Rules Governing Section 2254 cases in the United States District Courts. Under Rule 4, the Petition must

be summarily dismissed “[i]f it plainly appears from the face of the petition and any attached exhibits that the petitioner is not entitled to relief in the District Court.” If summary dismissal is not warranted, the judge must order the respondent to file an answer, motion, or other response or to take some other action as ordered by the judge.

Judge Strong issued Findings and Recommendations in which he concludes that the Petition is barred under the doctrine of procedural default and that the Petition has been filed outside of the one-year statute of limitations. See 28 U.S.C. § 2244(d). Judge Strong recommends denial of the Petition on those bases.

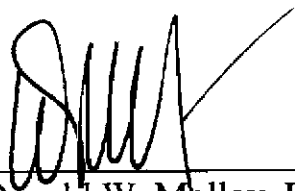
Because he concludes that Petitioner is not entitled to relief, Judge Strong recommends dismissal of the Petition and denial of a certificate of appealability. Petitioner did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Strong’s Findings and Recommendations (Doc. No. 16) and therefore adopt them in full.

Accordingly, IT IS HEREBY ORDERED that the Petition is DISMISSED

WITH PREJUDICE as time-barred and procedurally defaulted without excuse, and a certificate of appealability is DENIED.

The Clerk of Court is directed to enter by separate document a judgment in favor of the Respondent and against Petitioner.

DATED this 5 day of January, 2010.



Donald W. Molloy, District Judge
United States District Court

